

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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CHARLES WIRTH,

Plaintiff(s),

v.

NEVADA SUPREME COURT, et al.,

Defendant(s).

Case No. 3:19-CV-276 JCM (WGC)

ORDER

Presently before the court is Magistrate Judge William G. Cobb's report and recommendation ("R&R"). (ECF No. 12). Pro se petitioner Charles Wirth ("Wirth") filed objections to the R&R. (ECF No. 14). Defendants did not respond and the time to do so has passed.

Also before the court is Wirth's motion for leave to proceed in forma pauperis. (ECF No. 9).

**I. Background**

Judge Cobb screened Wirth's petition for a writ of mandamus. (ECF No. 12 at 3). Wirth alleges various statutory and constitutional defects in the Nevada Parole Board's decision to deny him parole on March 27, 2018. (ECF No. 1-1 at 6). Wirth contends that his crime's severity level and his risk level should have both been designated as low, entitling him to parole at his initial eligibility under NAC 213.516. (*Id.* at 16). Second, because his severity and risk levels were both low, the Parole Board should not have considered the aggravating and mitigating factors enumerated in NAC 213.518. (*Id.*).

Judge Cobb recommends granting Wirth's application to proceed in forma pauperis and dismissing his petition for writ of mandamus as moot because he has since been paroled. (ECF

No. 12 at 3). Wirth now objects to Judge Cobb's recommendations. (ECF No. 14). His objections do not dispute that he has been paroled. (*Id.*).

## II. Legal Standard

A party may file specific written objections to the report and recommendations of a United States magistrate judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B); LR IB 3-2. When a party timely objects to a magistrate judge's report and recommendation, the court is required to "make a de novo determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). The court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." *Id.*

Under Local Rule IB 3-2(a), a party may object to the report and recommendation of a magistrate judge within fourteen (14) days from the date of service of the findings and recommendations. Similarly, Local Rule 7-2 provides that a party must file its opposition to the objections within fourteen (14) days after being served.

## III. Discussion

When Wirth first filed his petition for a writ of mandamus, he was still incarcerated within the Nevada Department of Corrections. (ECF No. 12 at 3). He has since been paroled. (*Id.*). Wirth does not object to this factual finding. (ECF No. 14). This makes his petition moot. *Weinstein v. Bradford*, 423 U.S. 147, 148 (1975) (per curiam) ("It is undisputed that respondent was temporarily paroled . . . and that this status ripened into a complete release from supervision on March 25, 1975. From that date forward it is plain that respondent can have no interest whatever in the procedures followed by [the North Carolina Board of Parole] in granting parole.").

The "capable of repetition yet evading review" exception to mootness does not apply here because there is no "demonstrated probability" that Wirth will again be subject to the Nevada Parole Board's allegedly statutorily and constitutionally defective procedures. *Id.* at 149. Because the court finds that this case is moot, it will not consider the merits of Wirth's claims.

1 **IV. Conclusion**

2 Accordingly,

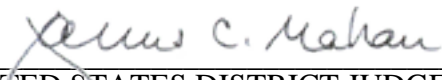
3 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Magistrate Judge  
4 William G. Cobb's report and recommendation (ECF No. 12) be, and the same hereby is,  
5 ADOPTED.

6 IT IS FURTHER ORDERED that Wirth's motion for leave to proceed in forma pauperis  
7 (ECF No. 9) is GRANTED.

8 IT IS FURTHER ORDERED that Wirth's petition for a writ of mandamus is  
9 DISMISSED as moot.

10 The clerk is instructed to close the case.

11 DATED September 28, 2020.

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UNITED STATES DISTRICT JUDGE